SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 412

HAROLD KRAMER,

Appellant,

vs.

STATE OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

MOTION FOR LEAVE TO FILE STATEMENT AS TO JURISDICTION AND STATEMENT AS TO JURISDICTION.

WILLIAM J. CONNELLY,
Counsel for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 412

HAROLD KRAMER,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

MOTION.

Now comes the petitioner, and moves for leave to file the Jurisdictional Statement in the above entitled case heretofore filed with the Clerk of this court.

Respectfully submitted,

WILLIAM J. CORRIGAN,
Attorney for Petitioner, Harold Kramer,
620 Williamson Bldg.,
Cleveland, O.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 412

HAROLD KRAMER,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

JURISDICTIONAL STATEMENT.

The jurisdiction of this court is invoked under Title 28 U. S. C., Section 344 (b), Section 237-(b), of the Judicial Code as amended by the Act of February 13, 1925, and March 8, 1939.

The statute of the State of Ohio that is involved is found in Volume 119 Ohio Laws, page 97. This statute defines what is the practice of dentistry.

Prior to May, 1941, the practice of dentistry was defined as follows:

> Section 1329. "Any person shall be regarded as practicing dentistry within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either

to himself or to another person, performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions thereof, or who takes impressions of the human teeth or jaws, or who uses the words 'dentist', 'dental surgeon', the letters 'D.D.S.' or other letters or title in connection with his name, which in any way represent him as being engaged in the practice of dentistry."

On May 22, 1941, the above section was amended by adding the following language:

"Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another * * *".

This amendment became effective August 21, 1941.

The petitioner was charged in the Court of a Justice of the Peace of Cuyahoga County with the violation of that part of the statute which was amended May 22, 1941, in this; that he repaired a certain false plate of Ann Wallace without having received a prescription from a licensed dentist and with advertising the repair of dental plates, and that such advertisements were directed to others than licensed dentists. He was convicted on May 28, 1942, and fined Two Hundred Dollars.

Error was prosecuted to the Common Pleas Court of Cuyahoga County, which court affirmed the judgment of

the Justice Court without opinion. Appeal was taken to the Fifth District Court of Appeals of Ohio, which court also affirmed the judgment without opinion. Appeal was then had to the Supreme Court of the State of Ohio upon a Motion to certify the record and an appeal taken as of right. Motion to certify the record was overruled July 8, 1943. Appeal filed as of right was dismissed on the Motion of the State of Ohio July 8, 1943. Rehearing thereon was denied July 14, 1943.

The question involved is whether or not the amendment to Section 1329, as above set forth, is in violation of the defendant's rights under the following sections of the Constitution of the State of Ohio:

Article I—Bill of Rights—Sec. 1:

> "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

Article I—Section 14:

> "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

Article I—Section 19:

> "Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads which shall be open to the public, without charge, a compensation shall be made to the owner, in money: and in all other cases, where private prop-

> erty shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner."

and whether said law was and is unconstitutional and in violation of the defendant's rights under the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The question was raised in the first instance by Demurrer to the Affidavit, by objection to the introduction of evidence, by Motion to direct a verdict at the conclusion of the State's case, by Motion to direct a verdict at the conclusion of all the evidence, by Motion for judgment notwithstanding the verdict and by Motion for a new trial.

The Assignments of Error raised in all courts were as follows:

> (1) That the Court of the Justice of the Peace erred in overruling the Demurrer of the petitioner;
>
> (2) That the Court erred in overruling the objection of the petitioner to the introduction of evidence;
>
> (3) That the Court erred in overruling the petitioner's Motion for judgment;
>
> (4) That the Court erred in failing to declare Section 1329 of the Ohio General Code as amended May 22, 1941, regulating the practice of dentistry, unconstitutional and in violation of the defendant appellant's rights under the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution and in violation of the defendant's rights under Sections 1, 14 and 19 of Article I of the Constitution of the State of Ohio.

The question involved is substantial because the amendment under which the petitioner was convicted is claimed by the petitioner is not established in the law for the pur-

pose of protecting the health, morals and general welfare of the people, but has for its purpose the creation of a monopoly and the complete control by licensed dentists of the prices that the public must pay for work that is performed not by dentists but almost exclusively by tradesmen and manufacturers. The amendment places the general public at the mercy of the licensed dentists not for what the public pays for professional service and advice, but for what they pay for work that is entirely mechanical and in most instances performed outside the licensed dentists's office.

Following is references to places in the record where the questions involved appear:

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Respectfully submitted,

WILLIAM J. CORRIGAN,
Attorney for Petitioner,
2016 N. B. C. Bldg., Cleveland, O.

(19)

FILED
OCT 6 1943
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 412.....

HAROLD KRAMER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO,

and

BRIEF OF PETITIONER

In Support of Petition for Appeal.

WILLIAM J. CORRIGAN,
N. B. C. Building, Cleveland, Ohio,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

HAROLD KRAMER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Your petitioner prays for writ of certiorari to review the decision of the Supreme Court of Ohio in the above case.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner is a dental mechanic and was defendant in a criminal action instituted in the Court of Myron J. Penty, Justice of the Peace, Warrensville Township, Cuyahoga County, Ohio, for violation of a statute of the State of Ohio, General Code Section 1329. This section defines what is the practice of dentistry. Prior to May, 1941, the practice of dentistry was defined as follows:

> *Section 1329.* "Any person shall be regarded as practicing dentistry within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions

thereof, or who takes impressions of the human teeth or jaws, or who uses the words 'dentist,' 'dental surgeon,' the letters 'D.D.S.' or other letters or title in connection with his name, which in any way represent him as being engaged in the practice of dentistry."

On May 22, 1941, the above section of the Code was amended by adding the following language:

"Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, * * *."

This amendment became effective August 21, 1941.

The petitioner was charged with having repaired a certain false plate of one Ann Wallace without having received a prescription from a licensed dentist and with advertising the repair of dental plates and that such advertisements were directed to persons other than licensed dentists.

Upon the trial of said cause on May 28, 1942, the petitioner was convicted and judgment rendered in favor of the State of Ohio and petitioner was fined Two Hundred Dollars and cost. Error was prosecuted to the Common Pleas Court of Cuyahoga County, which court affirmed the judgment of the Justice Court without opinion. Appeal was then taken to the Eighth District Court of Appeals of Ohio, which court also affirmed the judgment without opinion. An appeal was then had to the Supreme Court of the State of Ohio upon a Motion to certify the record and an appeal filed as of right.

The Motion to certify the record was overruled July 8, 1943. The appeal filed as of right was dismissed on the Motion of the State of Ohio July 8, 1943. Re-hearing thereon was denied July 14, 1943.

This petition is based upon the action of the Supreme Court of Ohio in overruling the Motion of the petitioner for certification of the record and for leave to appeal as of right and the dismissal of a re-hearing July 14, 1943.

REASONS RELIED ON FOR THE ALLOWANCE OF THE APPEAL.

The affidavit was drawn under the part of Section 1329 of the Ohio General Code which reads as follows:

> "Or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, * * *."

The law was and is unconstitutional and in violation of defendant's rights under the following sections of the Constitution of the State of Ohio, to-wit:

Article I—Bill of Rights—Sec. 1:

> "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

Article I—Section 14:

> "The right of the people to be secure in their persons, houses, papers, and possessions, against unrea-

sonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

Article I—Section 19:

"Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads which shall be open to the public, without charge, a compensation shall be made to the owner, in money: and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner."

Said law also was and is unconstitutional and in violation of defendant's rights under the Fifth Amendment to the Constitution of the United States, which is as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the Constitution of the United States, which is as follows:

"Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The respondent is a dental mechanic, conducting his own business for the past seven years, and under the provisions of this State Law cannot operate at his trade unless he takes employment with a duly licensed dentist. The statute creates a situation where the price that the public must pay for repair work performed by mechanic is fixed by a licensed dentist. The statute gives absolute control of the mechanic to the licensed dentist. He must work for the licensed dentist or seek other employment.

WHEREFORE, your petitioner respectfully prays that an appeal be allowed to review the decision and judgment of the court below.

HAROLD KRAMER—*Petitioner,*

By WILLIAM J. CORRIGAN,

2016 National Broadcasting Building,

Cleveland, Ohio,

Attorney for the Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. . . . . .

HAROLD KRAMER,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

The amendment to the State Dental Practice Act that became effective August 21, 1941, is in violation of Sections 1, 14 and 19 of Article I of the Constitution of the State of Ohio, and the Fifth and Fourteenth Amendments to the Constitution of the United States. The amendment is not established in the law for the purpose of protecting the health, morals or general welfare of the people, but has for its purpose the creation of a monopoly and the complete control by licensed dentists of the prices that the public must pay for work that is performed almost exclusively by tradesmen and manufacturers.

In the practice of dentistry, the manufacture and repair of dentures and false teeth is performed principally by expert tradesmen commonly known as dental technicians. These mechanics learn their trade, as did the defendant, by becoming apprenticed to a dental mechanic, and after a number of years of practice, progress into a full fledged mechanic.

In furnishing a set of false teeth to a patient, the following is the usual and customary practice. The licensed

dentist takes an impression of the patient's mouth with plaster-of-Paris. This impression is sent to the dental mechanic who uses it to make the cast from which is constructed the set of false teeth. The set of false teeth, when finished by the technician, is sent to the licensed dentist who adjusts it to the patient's mouth. Once the patient has secured his false denture, the repair of that false denture when it is cracked or broken, or when teeth are knocked out, is purely a mechanical operation. The duplication of a false denture is likewise a purely mechanical operation.

There are two classes of dental mechanics—those who work directly for the licensed dentist, and not for the general public; and others in which class this defendant falls, who advertise to the general public that they duplicate and repair false dentures.

Dental mechanics do not prescribe, take impressions or set the plate in the mouth of the patient. As the evidence discloses this defendant does none of these things. The work of this defendant and all dental mechanics is confined strictly to making false dentures on the prescription furnished by the licensed dentists, or after they have been so furnished to duplicate the plate or repair it when it is broken.

Section 1329 of the Ohio General Code, as amended in August, 1941, defines the practice of dentistry generally as being the acts of the professional, licensed practitioners; and includes, in and as the practice of dentistry, the mechanical work of a tradesman usually called a laboratory technician. This Section, however, excepts the mechanical work of the tradesman from the practice of dentistry if it is done on the prescription of a licensed dentist. The amendment does not prohibit advertising by the dental tradesman if the advertising is directed solely to licensed dentists.

If the mechanical work of making or repairing of false teeth is done on the prescription of a licensed dentist or if

the dental mechanic offers to sell to a licensed dentist, the dental mechanic is not practicing dentistry. The statute recognizes that false teeth, plates and repairs may be made by an unlicensed mechanic and that this unlicensed mechanic may advertise his wares but he can advertise them to but one class, that is: to licensed dentists.

The restriction set up by the amendment in no way changes the nature of the work performed by the dental mechanic. The purpose of the amendment, which confines the advertising of the dental mechanic solely to the licensed practitioner and which prevents the mechanic from doing repairs except on the prescription of a licensed dentist, is to prevent the dental mechanic from doing any business with the general public. This restriction establishes in the hands of the licensed dentists the price that the general public shall pay for work that is done by a mechanic, and places the mechanic completely and wholly within the control of the licensed practitioner.

This amendment places the general public completely at the mercy of the licensed practitioner, not for what they pay for professional service and advice, but for what they pay for work that is entirely mechanical and in most instances performed outside the licensed dentist's office. The evidence discloses as testified by the defendant on demurrer that seventy per cent (70%) of the dentists in greater Cleveland do not make dentures or repairs, but send this work out of their office to be done by dental mechanics; and in the State of Ohio, outside of Cleveland seventy-three per cent (73%) send their work to dental mechanics.

The vicious system of monopoly that is attempted by this enactment whereby the licensed dentist controls the prices that the public pay for repair and duplication of dental plates is shown by the following facts that appear in the Bill of Exceptions:

The average prices charged to the general public by the licensed dentist for the work performed by his mechanic, as compared with the prices charged to the public by the mechanic when he can deal directly with the public in matters of repairs are as follows:

For adding a single tooth to a rubber plate, the licensed dentist: $5.00. This defendant: 75¢.

For the duplication of a full denture, licensed dentist's price: $80.00. Defendant's price: $20.00.

For a fracture of a rubber denture, licensed dentist's price: $10.00. Defendant's price: $2.00 or $3.00.

For the duplication of a plastic denture, licensed dentist's price: $50.00 to $500.00. Defendant's price: $15.00.

For the fracture of a plastic denture, licensed dentist's charge: $10.00 to $15.00. Defendant's price: $4.00 to $5.00.

It is readily seen that the public is in for a terrific gouging through the operation of this law which compels them to go to a licensed dentist to secure a prescription before a mechanic can mend a plate; the law prevents the public from paying the mechanic for the repair to the plate, and compels them to pay a licensed dentist the charge that he fixes for this mechanical work.

The vicious system of monopoly that is attempted by the enactment of this amendment to the Dental Practice Act has been condemned by the medical profession, and certainly will be condemned by the public generally just as soon as they know about it.

On January 4, 1941, the American Medical Association held its Ninety-Second Annual Session in Cleveland, Ohio. Dr. Albert C. Snell, Chairman of the section on Ophthalmology, condemned as unethical certain questionable practices of ophthalmologists in dispensing eye glasses. After setting forth four methods of supplying glasses to the public, all of which are in line with ethical practice, he spoke of a fifth method. "One in which ophthalmologists

have a partial or complete ownership in an optical dispensing store, which at times is designated by the more subtle name of laboratory. By this method the ophthalmologist has a direct interest in the profits from sales connected with his prescriptions. The financial interest in such stores is generally not known to the patients who patronize such stores on advice of the ophthalmologist."

Condemning this practice we cull the following sentences from his address:

> Page 499. "The outright or partial interest in any retail optical store is an indirect method of receiving rebates, and the best ethical traditions of the profession are violated when ophthalmologists yield to this temptation to make a profit on ophthalmic supplies."
>
> "It is a fundamental duty of the ophthalmologist to give his patients an unselfish, unbiased and unhampered service—the best advice which his experience and knowledge dictate. It is very questionable whether such service can be rendered without some degree of prejudice, perhaps unconsciously, by an ophthalmologist who has a financial interest in the commercial side of supplying the equipment. As far as refractive problems are concerned, patients consult the ophthalmologist not primarily to get a pair of lenses, but to find out whether or not there is need for them. * * *"
>
> "* * * As a consequence of this method of practice, patients are compelled to pay for services which are not rendered either by the ophthalmologist or by the optician. Evidently this practice does not consider the best interest of the patient."
>
> "When an adequate and proper fee is made for the professional services rendered, the ophthalmologist is not ethically entitled to some additional fee from the sale of the glasses. * * *"

This speech appears in the issue of the Journal of the American Medical Association for August 16, 1941.

The amendment to the Dental Practice Act, instead of protecting the people against unethical practices, brings into the practice of dentistry the evils that Dr. Snell condemns in the practice of ophthalmology.

In numerous instances the professional man relies upon the work of tradesmen and manufacturers for aid or the completion of his treatment. As noted in the address quoted, ophthalmologists, after determining that a patient needs glasses, rely upon the optician to supply the lenses. Surgeons and physicians, in increasing numbers, rely on tradesmen and manufacturers to supply their patients with braces, shoes, corsets, arch supports, sacro-iliac and various kinds of body support, wooden legs, glass eyes, crutches, abdominal bandages, hearing aids, trusses, therapeutic electric lamps, etc.

Rather recent discoveries made by the medical profession in aiding the deaf or hard of hearing has resulted in extensive manufacturing of hearing aids by companies both large and small who solicit public patronage through advertising.

The extension of the idea that is in this amendment to the Dental Practice Act of Ohio, and which confines the sale of mechanical work solely to licensed dentists, might bring us to the time when the possession of a license would result in the control by the licensee of what the public will have to pay for a variety of related services.

All professions and a number of trades and occupations are now licensed, such as barbers, manicurists, beauty parlor operators, who have the high sounding name of Cosmetologist. If the licensed dentists are successful in retaining control of the dental technicians, the result may well be that the legislature may pass similar laws to control other groups for the benefit of the holder of a license.

The amendment also deprives the defendant of the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Before the introduction of the testimony and in support of the demurrer that was filed there was introduced Exhibits 1 to 11, showing advertising that appears in nationally circulated magazines through which dental mechanics seek the patronage of the public of Ohio; and while the advertising is to the public in Ohio for repair work on false dentures, the repair work is done outside of the State of Ohio. Such advertising is not and cannot be reached by the statute under consideration, and while craftsmen outside of the State of Ohio can advertise their craft within the state, this law prevents the citizen of the State of Ohio, because he performs his work inside the state, from advertising. Thus this amendment deprives the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

While it is well settled that legislative action may be taken to prohibit an occupation that is harmful to the public, and proper regulatory measures may be passed confining the practice of any profession or occupation within certain boundaries for the purpose of protecting the public, a state cannot under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them, or create a monopoly. The Ohio rule is set forth in the case of *State of Ohio vs. Boone*, 84 Ohio St. The following is from page 351 of that Opinion:

> "The police power is inherent in sovereignty; and its exercise is justified by the necessity of the occasion. Its foundation is the right and duty of the government to provide for the common welfare of the governed. It is tersely expressed in the maxim, '*Salus Populi suprema lex.*' While, therefore, a broad discretion is given to the legislature to provide for the general welfare, it, necessarily, is not an arbitrary or unlimited dis-

cretion; for if it were beyond judicial control or review, it would amount to a practical abrogation of all constitutional guaranties of personal rights and the undefined boundaries of legislative despotism conducted in the name of the people. Hence it has been held not only in this state, but in a great number of cases both in the federal and state courts that it is within the judicial power to declare void an unnecessary or unreasonable exercise of police power. This rule was approved and applied in *Phillips vs. State*, 77 Ohio St., 214, 'To justify the state in thus interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under guise of protecting, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination of what is a proper exercise of the police power is not final or conclusive, but is subject to the supervision of the courts.' *Lawton vs. Steele*, 152 U. S. 133. See also numerous cases cited in 22 *Am. & Eng. Enc. Law* (2 ed.) 939."

As authority for granting this petition we submit the following cases:

Peter Mugler v. State of Kansas, 123 U. S. Sup. Ct. Rep. 661:

> "Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety.
>
> It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which

legislation cannot rightfully go. While every possible presumption is to be induged in favor of the validity of a statute, *Sinking Fund Cases,* 99 U. S. 718 (25: 501), the courts must obey the Constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury v. Madison,* 5 U. S. 1 Cranch, 137, 167 (2: 60, 70), 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.''

Adair v. United States, 208 U. S. Sup. Ct. Rep. 173 and 174:

''The right to purchase or to sell labor is part of the liberty protected by this Amendment, unless there are circumstances which exclude the right. There are, however, certain powers existing in the sovereignty of each state in the Union, somewhat vaguely termed 'police powers,' the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such rea-

sonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the 14th Amendment was not designed to interfere. *Mugler v. Kansas*, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; *Re Kemmler*, 136 U. S. 436, 34 L. ed. 519, 10 Sup. Ct. Rep. 930; *Crowley v. Christensen*, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13; *Re Converse*, 137 U. S. 624, 34 L. ed. 796, 11 Sup. Ct. Rep. 191. * * * In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interfrence with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course, the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor. Although there was a difference of opinion in that case among the members of the court as to certain propositions, there was no disagreement as to the general proposition that there is a liberty of contract which cannot be unreasonably interfered with by legislation. The minority were of opinion that the business referred to in the New York statute was such as to require regulation, and that, as the statute was not shown plainly and palpably to have imposed an unreasonable restraint upon freedom of contract, it should be regarded by the courts as a valid exercise of the state's power to care for the health and safety of its people.

While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept

or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it."

Meyer vs. Nebraska, 262 U. S. Sup. Ct. Rep. 390:

Syllabus 1. "The liberty guaranteed by the 14th Amendment to the Federal Constitution denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Syllabus 2. "The liberty protected by the 14th Amendment to the Federal Constitution may not be interfered with, under the guise of protecting the public interests, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

Syllabus 3. "Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts."

Jay Burns Baking Co. v. Charles W. Bryan, etc., 264 U. S. Sup. Ct. Rep. 504-534:

Syllabus 1. "A state may not, in the guise of protection of the public, arbitrarily interfere with private business, or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions upon them."

Courts—duty to determine reasonableness of statute.

Syllabus 2. "The court must, when constitutional protection from state legislation respecting the weight of loaves of bread is invoked, determine whether or not the challenged provision has reasonable relation

to the protection of purchasers of bread against fraud by short weights, and really tends to accomplish the purpose for which it was intended."

Norfolk & Western Railway Co. v. Public Service Commission of West Virginia, 265 U. S. Sup. Ct. Rep. 70-75:

Syllabus 2. "When the validity of measures adopted by a state legislature for the regulation of facilities provided by railroad companies for the convenience of communities served by them is challenged on the ground that they violate the Constitution, it becomes the duty of the court to determine whether, in the light of the facts, the regulation is reasonable and valid, or essentially unreasonable, arbitrary, and void."

Walter M. Pierce, etc. v. Society of Sisters, etc., 268 U. S. Sup. Rep. 510:

Syllabus 1. "Requiring all children between the ages of eight and sixteen years to attend the public schools unconstitutionally interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

Syllabus 2. "That the owners of private schools whose business and property will be destroyed by the enforcement of a statute requiring all children to attend public schools are corporations does not prevent the granting of relief against such enforcement as an interference with constitutional rights."

D. E. Weaver, etc. v. Palmer Brothers Co., 270 U. S. Sup. Ct. Rep. 402-416:

Syllabus 1. "Legislative determination, express or implied, are entitled to great weight, but it is always open to interested persons to show that the legislature has transgressed the limits of its power."

Fairmont Creamery Co. v. State of Minnesota, 274 U. S. Sup. Ct. Rep. 1:

Syllabus 1. "A state statute, forbidding, under penalty, creameries to purchase cream at higher prices in one locality than in other localities, after allowance

for the difference in cost of transportation, is unconstitutional as impairing the private right of freedom of contract guaranteed by the 14th Amendment to the Federal Constitution, although the high bidding of strong buyers tends toward monopoly, since the statute has no reasonable relation to such bidding, previously regarded as beneficial to the public."

Liggett vs. Baldridge, 278 U. S. Sup. Ct. Rep., 105:

Syllabus 4. "The police power may be exerted in the form of state legislation where otherwise the effect would be to invade rights, guaranteed by the Federal Constitution only where the legislation bears a real and substantial relation to the public health, safety, morals or some other phase of the general welfare."

Respectfully submitted,

WILLIAM J. CORRIGAN,
Attorney for Petitioner.

FILED
OCT 6 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 412

HAROLD KRAMER,

Appellant,

vs.

STATE OF OHIO.

APPEAL FROM THE SUPREME COURT OF OHIO.

STATEMENT AGAINST JURISDICTION AND MOTION BY APPELLEE TO DISMISS OR AFFIRM.

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio;
SAUL S. DANACEAU,
Assistant Prosecuting Attorney,
Criminal Courts Building,
Cleveland, Ohio,
Counsel for Appellee.

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IN THE SUPREME COURT OF OHIO

No. 29,567

HAROLD KRAMER,

Appellant,

vs.

STATE OF OHIO,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF CUYAHOGA COUNTY, OHIO.

STATEMENT AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Now comes appellee, State of Ohio, and says that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument and that it is manifest that the appeal taken by appellant is for delay only. In support and explanation thereof there is filed herewith a Motion to Dismiss or Affirm, supported by memorandum.

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio,
By/and SAUL S. DANACEAU,
Assistant Prosecuting Attorney,
Attorneys for Appellee.

IN THE SUPREME COURT OF OHIO

No. 29,567

HAROLD KRAMER,

Appellant,

vs.

STATE OF OHIO,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF CUYAHOGA COUNTY, OHIO.

MOTION TO DISMISS OR AFFIRM.

Now comes appellee, State of Ohio, and moves to dismiss the appeal of appellant, Harold Kramer, or in the alternative, to affirm the judgment herein of the Courts of Ohio, for the reasons set forth in the accompanying memorandum.

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio,

By SAUL S. DANACEAU,
Assistant Prosecuting Attorney,
Attorneys for Appellee.

IN THE SUPREME COURT OF OHIO

No. 29,567

HAROLD KRAMER,

Appellant,

vs.

STATE OF OHIO,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF CUYAHOGA COUNTY, OHIO.

MEMORANDUM IN SUPPORT OF STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

History of the Case.

On April 23, 1942, E. H. Sellers, State Inspector for the State Dental Board, made an affidavit before Justice of the Peace Penty in Cleveland charging appellant Harold Kramer with a violation of the state dental laws. Kramer was arraigned April 27th, 1942, and after two or three continuances was eventually tried to a jury in Justice Penty's court and was found guilty. The defendant was fined $200.00 and costs, and after a motion for new trial was filed and overruled, bond was fixed to allow defendant to prosecute error to the Common Pleas Court and a Bill of Exceptions was filed on June 30, 1942. On December 14, 1942 the case was argued before Judge Charles J. McNamee and on

January 18, 1943 Judge McNamee affirmed the judgment without opinion. Notice of appeal was given and on March 29, 1943 the case was argued to the Court of Appeals of Cuyahoga County. On April 19, 1943 the Court of Appeals affirmed the judgment without opinion.

Appellant thereupon on April 28, 1943 filed in the Supreme Court of Ohio a motion for an order to certify the record and also gave notice of appeal to the Supreme Court of Ohio as in a case involving a constitutional question. Thereafter, on June 16, 1943, the said Motion for an Order to Certify the Record was overruled and the said appeal filed as of right was dismissed for the reason that no debatable constitutional question is involved (141 O. S. 667). Appellant filed an application for rehearing and on July 14, 1943, such application for re-hearing was denied.

The Statute.

Section 1329 of the General Code of Ohio, as amended, effective August 21, 1941, reads as follows:

> "Any person shall be regarded as practicing dentistry, within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions thereof, or who takes impressions of the human teeth or jaws, *or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in*

the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, or who uses the words 'dentist,' 'dental surgeon,' the letters 'D. D. S.,' or other letters or title in connection with his name, which in any way represents him as being engaged in the practice of dentistry.

The term manager, proprietor, operator or conductor as herein used shall be deemed to include any person

1. Who employs licensed operators;

2. Who places in the possession of licensed operators dental offices or dental equipment necessary for the handling of dental offices on the basis of a lease or any other agreement for compensation or profit for the use of such office or equipment; when such compensation is manifestly in excess of the reasonable rental value of such premises and equipment.

"3. Who makes any other arrangements whereby he derives profit, compensation or advantage through retaining the ownership or control of dental offices or necessary dental equipment by making the same available in any manner whatsoever for the use of licensed operators; provided, however, that the above shall not apply to bona fide sales of dental equipment secured by chattel mortgage.

'Whoever having a license to practice dentistry or dental hygiene shall enter the employment of, or shall enter into any of the above described arrangements with, an unlicensed manager, proprietor, operator or conductor may have his license suspended or revoked by the state dental board therefor.' "

(119 v. H. 97; 116 v. 82; 115 v. 68; 111 v. 113; 99 v. 69, § 18. Eff. Aug. 21, 1941.)

An examination of this section in the 1940 Code, reveals that all of the above language which is underlined, was added in the amendment which became effective August 21, 1941. The amendment seeks to regulate dental laboratories and dental repairmen.

The Affidavit.

The affidavit on which the defendant was convicted before Justice of the Peace Myron J. Penty reads as follows:

"THE STATE OF OHIO,
Cuyahoga County, ss:

Warrensville Township.

BEFORE me, M. J. Penty, a Justice of the Peace in and for said County, personally came E. H. Sellers, State Inspector, who being duly sworn according to law, Deposeth and Sayeth, that on or about the 9th day of April, A. D. 1942 at the County of Cuyahoga, one Harold Kramer not being then and there a dentist licensed by the Ohio State Dental Board, did then and there at 112 Prospect Avenue, in the City of Cleveland, County of Cuyahoga and State of Ohio, unlawfully for a fee supply and repair a certain denture for one Ann Wallace, without having first received from a dentist licensed by the Ohio State Dental Board an order or prescription to supply or repair said denture. That further said Harold Kramer unlawfully did advertise, offer, sell or deliver the services rendered in the supply or repair of dental plates to a person or persons other than a licensed dentist. Contrary to the form of statutes in such cases made and provided and against the peace and dignity of the State of Ohio.

E. H. SELLERS.

Sworn to and Subscribed before me this 23rd day of April, A. D. 1942.

M. J. PENTY,
Justice of the Peace."

Section 1329-1 of the General Code of Ohio reads as follows:

"Section 1329-1. (Practice lawful under individual name only; penalty.)

It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery under the name of any company, association, or corporation, and any person or persons practicing or offering to practice dentistry or dental surgery shall do so under his name only and he shall not conduct a dental office in his name nor advertise his name in connection with any dental office or offices unless he is himself personally present in said office operating as a dentist or personally overseeing such operations as are performed in said office or each of said offices during a majority of the time said office or each of said offices is being operated by him; any person convicted of a violation of the provisions of this section shall be fined for the first offense not less than one hundred dollars, nor more than five hundred dollars, and upon a second conviction therefor, his license may be suspended or revoked, as provided in section 1325 of this act."

Facts.

It was conceded in the opening statement of counsel for the defense to the jury in Penty's Court that Kramer was not a licensed dentist. It was further conceded that the defendant Kramer, who operates a business known as the Dental Repair Company, does advertise (R. 27). The state's Exhibit "A" was admitted by defense counsel to be the card of defendant Kramer (R. 33); and state's Exhibit "B" showing an ad in the West Side News was offered (R. 33), and was admitted to be the ad of defendant Kramer (R. 34).

Fred Weigel, the first witness for the state, testified that he was the advertising representative of the West Side News (R. 35); that the paper is published every Thursday with a circulation of 90,000; that Kramer placed an ad in that paper September 11, 1941; and that Kramer made a change in the ad about January 29th (R. 36).

Further, Weigel testified as follows:

"Q. Showing you the West Side News of Thursday, January 29, 1942——

A. If I am not mistaken, that is not the same ad. The first ad ran September 11 and had a different price. I don't recall what it is. I believe Mr. Sellers had a copy of the ad running on September 11, and then two days prior to January 29 Mr. Kramer called me and told me to make a change in the ad, which we subsequently did, and this is the ad (indicating).

Q. And this is the ad?

A. Yes, and that is the ad that has run ever since.

Q. Are these ads run under a contract?

A. Yes, they are.

Q. What are the terms of the contract?

A. I have copies of the contract here." (R. 37 and 38.)

Ann Wallace testified in substance that she was employed by the Better Business Bureau; and that she went to 112 Prospect Avenue to this Dental Clinic on April 9 of this year (R. 42 and 43).

Further, Ann Wallace testified in part as follows:

"Q. Is that the plate you took to Mr. Kramer?

A. Yes, it is.

Q. Before you took that plate to Mr. Kramer, what was wrong with it?

A. There was a tooth out of it.

Q. Can you point to which tooth that was out of there?

A. This one (indicating).

Q. And after you gave this to Mr. Kramer, what did he tell you with reference to this?

A. He told me the charge, and I wanted—when I asked him when I could call for it, he said, 'About four o'clock.'

Q. Did you ask him if he could repair this plate?

A. Yes, I asked if it could be repaired and he said, 'Yes.'

Q. Did you return for it at four o'clock?

A. Yes, I went for it myself.

Q. Is this the plate Mr. Kramer repaired for you (indicating)?

A. Yes, sir.

Q. How much did you say you paid Mr. Kramer?

A. $1.25.

Q. When did you pay that?

A. When I got the teeth." (R. 45.)

Again Ann Wallace testified:

"Q. Now, before you entered Mr. Kramer's office at 112 Prospect Avenue, did you go to a dentist before that?

A. No, I didn't.

Q. You didn't go to a licensed dentist?

A. No, I did not.

Q. And no licensed dentist sent you to see Mr. Kramer?

A. No.

Q. And did Mr. Kramer at the time you went there, did he ask you if you had a prescription from a licensed dentist?

A. No.

Q. Did he refer you to a dentist?

A. No.

Q. And at that time you asked him, you told him that you wanted this plate repaired?

A. Yes, I did.

Q. Now, after you received these plates, or at the time you received them, did Mr. Kramer send you to a dentist?

A. No." (R. 46 and 47.)

Mrs. Phillips Chinn, a housewife whose husband worked for the White Motor Company, testified among other things as follows:

"Q. Did you have any conversation with him at that time about the plate? You asked him to fix your teeth, did you?

A. Yes, if he would fix my tooth.

Q. What did he say as to that?

A. Yes, he would.

Q. Did you agree as to the price?

A. When I came back he charged me $1.25.

Q. He didn't fix your teeth right then?

A. No.

Q. Did he ask you to come back later?

A. Yes, twelve o'clock.

Q. Did you come back at twelve o'clock?

A. Yes.

Q. What happened when you came back at twelve o'clock; you saw him, did you?

A. Yes.

Q. Tell us what happened?

A. All that happened was that it wasn't quite cool and I had to wait until it cooled off, which was a matter of five to ten minutes, because I really was a little earlier and the gentleman came out and handed me my teeth and I went out.

Q. How much did that cost you?

A. $1.25.

Q. Before you went over that day, had you gone to a licensed dentist to have that tooth looked at?

A. No, sir.

Q. When you saw Mr. Kramer there, did he ask you whether or not you had been referred to him by a dentist?

A. No, sir.

Q. Did he ask you whether or not you had a prescription from the dentist?

A. No, sir.

Q. Did he refer you to a dentist before he started working on your plate?

A. No.

Q. He didn't ask anything regarding a dentist at all, did he, during that time?

A. No.

Q. Was that the first time you had been to that place?

A. Yes." (R. 56 and 57.)

Lillian Blaugh, dental assistant, testified that she went to this Dental Plate Repair Company. Miss Blaugh testified:

"Q. Tell us what you did when you went there?

A. Well, I had an upper denture that had one tooth missing and I asked if it could be repaired and the man said, 'Yes' and he told me how much it would be, $1.25, and it would be ready that afternoon at four o'clock.

Q. Did you leave it?

A. I left the denture there.

Q. You left the denture there?

A. Yes.

Q. You came back later, did you?

A. Yes, I did.

Q. What time did you get back?

A. I went back at four o'clock.

Q. Did you pick up this denture?

A. Yes, I did.

Q. Was it repaired?

A. It was repaired.

Q. You paid the price of $1.25, is that correct?

A. That is right.

Q. Now then, do you recall whom you talked to when you went there?

A. I know it was not Mr. Kramer.

Q. You know it wasn't Mr. Kramer.

A. I asked the man if he was the Mr. Kramer on the card and he said, 'No.'

Q. But you knew that it was the place of the man on the card?

A. Yes.

Q. Room 211?

A. Yes.

Q. This man you talked to, that you brought the plate to, did he ask you whether you had a prescription from a dentist?

A. No, he did not.

Q. Did he refer you to a dentist?

A. No, sir, he did not.

Q. Did you have any conversation whatsoever as to a dentist?

A. No, sir.

Q. You simply took your plate in there and had a conversation about what was to be done and it was done?

A. Yes.

Q. Was that the first time that you had been there?

A. Yes, it was." (R. 62 and 63.)

Mrs. Anna Kimmak testified:

"Q. What was wrong with your plate?

A. The plate was cracked.

Q. Where was it cracked?

A. Right in the middle.

Q. When you got there, what did you tell Mr. Kramer that you wanted done with the plate?

A. Just have it fixed.

Q. What did he tell you?

A. He just took it and fixed it.

Q. Did he tell you what time to call for it?

A. I told him, 'When to call for it' and I told him that I wouldn't work on Tuesday or Wednesday—my daughter on the way coming home from work would pass and pick it up.

Q. Did Mr. Kramer tell you how much the plate would be?

A. Yes, he told me five dollars.

Q. How much?

A. Five dollars.

Q. Five dollars?

A. Yes.

Q. You paid Mr. Kramer?

A. Yes, sure I did.

Q. When you went to Mr. Kramer were you sent by a dentist?

A. No, I went there by myself; I was recommended by a friend of mine.

Q. He didn't refer you, when you went there and talked to him, he didn't refer you to a dentist, did he?

A. No." (R. 71 and 72.)

It will be observed from the above testimony that these witnesses went directly to Kramer's Plate Repair Company, and that they had no connection with any licensed dentist in connection with the replacing of teeth and the repair of dentures. No licensed dentist had anything to do with the repairs or adjustment of the dentures either before or after defendant Kramer did his work.

It thus appears that the defendant was charged with a misdemeanor as described in Sections 1329 and 1329-1 of the General Code of Ohio. A warrant was issued in pursuance to the affidavit hereinbefore set forth and the defendant was arraigned on April 27, 1942. A demurrer filed by defendant was overruled and on May 15, 1942, defendant entered a plea of "not guilty" and demanded a Jury. On May 28, 1942, the defendant was given leave to withdraw his plea of "not guilty" and further hearing on the demurrer was had, and the demurrer was overruled. On May 28, 1942, the parties being present the trial was duly had. The defendant, Harold Kramer, entered a plea of "not guilty" and a Jury, after being duly impaneled and sworn to try said defendant, found the said defendant guilty.

Argument.

The record discloses affirmatively that the defendant, Harold Kramer, was accorded due process of law.

Appellant contends that the regulatory provisions of the General Code of Ohio pertaining to the practice of dentistry will result in increased prices being paid by patients with a resulting benefit to the licensed dentists and that such legislation works a hardship both on those who are not licensed dentists and on the public. Such arguments may well be addressed to the State Legislature but they can hardly form the basis of a real and substantial federal constitutional question.

The law is established beyond dispute that it is within the legitimate exercise of the police power of the State to

regulate in the public interest the practice of the profession of dentistry within the State. (*Douglas* v. *Noble*, 261 U. S. 165; *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608.)

It necessarily follows that it is within the legitimate exercise of the police power of the State to define within reasonable limits what constitutes the practice of dentistry. This is precisely what the legislature of the State of Ohio has done. The defendant, Harold Kramer, is admittedly not a licensed dentist and the record clearly discloses that he violated the provisions of Sections 1329 and 1329-1 of the General Code of Ohio, which provides that certain work relating to the reproducing or repair of bridges, appliances, etc., may not be done "except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, etc." This amendment allows one skilled in making or repairing dentures to work with and for dentists. It seeks to prohibit advertising by a repair man and the repair of dentures and the replacing of teeth without a dentist having some supervision and direction over the work to be done. The close relationship between good teeth and good health is self-evident. It will be readily seen that if the contention of the appellant is correct then any blacksmith in the State of Ohio who possesses the requisite skill can replace teeth in dentures and can repair dentures without any license and without any supervision or control. On the other hand, if appellant Kramer has the skill and ability which is claimed in this case, he undoubtedly would have plenty of work sent to him by the licensed dentists.

In *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608, 611, Mr. Chief Justice Hughes delivered the opinion of the Court, wherein he said:

"That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas *v.* Noble, 261 U. S. 165, 67 L. ed. 590, 43 S. Ct. 303; Graves *v.* Minnesota, 272 U. S. 425, 427, 71 L. ed. 331, 334, 47 S. Ct. 122. The State may thus afford protection against ignorance, incapacity and imposition. Dent *v.* West Virginia, 129 U. S. 114, 122, 32 L. ed. 623, 626, 9 S. Ct. 231; Graves *v.* Minnesota, *supra*. We have held that the State may deny to corporations the right to practice, insisting upon the personal obligations of individuals (State Dental Examiners *v.* Miller, 90 Colo. 193, 8 P. (2d) 699, 287 U. S. 563, 77 L. ed. 496, 53 S. Ct. 6), and that it may prohibit advertising that tends to mislead the public in this respect. Dr. Bloom Dentist *v.* Cruise, 259 N. Y. 358, 363, 182 N. E. 16, 288 U. S. 588, 77 L. ed. 967, 53 S. Ct. 320."

And on page 612:

"We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief."

And on page 613:

"The legislature was entitled to consider the general effects of the practices which it described, and if these effects were injurious in facilitating unwarranted and misleading claims, to counteract them by a general rule even though in particular instances there might be no actual deception or misstatement."

Appellant claims that the regulatory act is unconstitutional in that it violates the provisions of the fifth amendment and of Section 1 of the fourteenth amendment to the Constitution of the United States. The Supreme Court of the United States has already decided that such regulatory provisions are not in violation of the Federal Constitution and the record discloses on its face that the defendant has been accorded due process of law.

As to the claimed violations of the State Constitution, the State courts have ruled that there is no such violation and, certainly, such claims produce no Federal constitutional question.

The Supreme Court of Ohio has held that there is no debatable constitutional question involved herein and it is evident that the questions presented by appellant are so unsubstantial as not to need further argument and that it is manifest that the appeal was taken for delay only.

It might be well to further point out that the Supreme Court of Ohio did not, as appellant suggests in his statement, make any specific rulings on any of the questions presented. It merely denied the motion to certify and dismissed the appeal as of right for the reason that no debatable constitutional question is involved.

Respectfully submitted,

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio,
By SAUL S. DANACEAU,
Assistant Prosecuting Attorney,
Attorneys for Appellee,
Criminal Courts Bldg.,
Cleveland, Ohio.

SSD-sw

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